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April 9, 1998

BY HAND

Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

APR - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

*Re: Reply Comments of MFS Network Technologies, Inc. on the Petition for Declaratory
Ruling of Minnesota; CC Docket 98-1*

Dear Secretary Salas:

Please find enclosed for filing in the above-referenced matter an original plus twelve copies of the Reply Comments of MFS Network Technologies, Inc. Please date-stamp and return to the messenger the enclosed extra copy of the reply comments.

Thank you for your attention to this matter.

Sincerely,



Antony Richard Petrilla

Counsel for MFS Network Technologies, Inc.

Enclosure

cc: Janice Myles
Richard Bonds
Joel Van Over, Esq.
Andrew Lipman, Esq.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

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APR - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Petition of the State of Minnesota, Acting)
by and through the Minnesota Department of)
Transportation and the Minnesota Department)
of Administration, for a Declaratory Ruling)
Regarding the Effect of Sections 253(a), (b))
and (c) of the Telecommunications Act of)
1996 on an Agreement to Install Fiber)
Optic Wholesale Transport Capacity in)
State Freeway Rights-of-Way)

CC Docket No. 98-1

**REPLY COMMENTS OF MFS NETWORK TECHNOLOGIES, INC. ON THE
PETITION FOR DECLARATORY RULING
REGARDING THE EFFECT OF SECTIONS 253(a), (b) AND (c)
OF THE TELECOMMUNICATIONS ACT OF 1996
ON AN AGREEMENT TO INSTALL
FIBER OPTIC WHOLESALE TRANSPORT CAPACITY
IN STATE FREEWAY RIGHTS-OF-WAY**

MFS Network Technologies, Inc. ("MFS"), through undersigned counsel and pursuant to the Commission's *Public Notice* (DA 98-32, rel. January 9, 1998), hereby submits its reply comments on the above-captioned Petition for a Declaratory Ruling ("Petition"). The Petition of Minnesota, through its Department of Transportation and Department of Administration (collectively "Minnesota"), seeks to have the Commission determine whether Section 253 of the Communications Act of 1934, as amended, ("Act")¹ preempts the agreement (executed on December 23, 1997)² between Minnesota and ICS/UCN LLC and Stone & Webster Engineering Corporation.

¹ References to provisions of the Act hereinafter will be in the form: "Section ____."

² These comments will refer to this agreement as "the Agreement."

MFS poses these brief reply comments simply to call attention to the magnitude of the harm that would result if the Commission declines to preempt the Petition. The number of states that have commented favorably upon the Petition demonstrates the extent to which exclusive access arrangements like the Agreement would be adopted around the country if the Commission does not take action under Section 253. Twenty-four states submitted supporting letters, most of which apparently were derived from the same template and all of which presented only conclusory analysis.^{3/} Many of these letters either explicitly or implicitly indicated that the commenting states plan to adopt exclusive access arrangements similar to those contained in the Agreement. The remaining letters indicated that the commenting states might adopt such exclusive access arrangements in the future.

Although these supporting letters hardly add to the discussion of the issue in any meaningful way, they effectively demonstrate that, if the Commission does not preempt the Agreement, many other states will quickly follow Minnesota's lead. The Commission's decision in this matter bears not merely upon the 1,000 miles of freeways in Minnesota, but actually upon the entire set of freeways in the country. The Commission should not permit states to grant preferential and exclusive access to the nation's freeway rights-of-way to the highest bidding telecommunications provider for periods of twenty or more years. As MFS argued in its initial comments, the Commission should preempt the Petition under Section 253 as a prohibition on the provision of telecommunications services that is neither competitively neutral nor necessary

^{3/} Various state agencies in Alaska, Arizona, Delaware, Florida, Idaho, Iowa, Kansas, Maine, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin submitted supporting letters during the initial round of comments on the Petition.

to protect public safety nor needed to manage public rights-of-way.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Antony Petrilla".

Andrew D. Lipman

C. Joël Van Over

Antony Richard Petrilla

Swidler & Berlin, Chartered

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Counsel for MFS Network Technologies,
Inc.

Dated: April 9, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 1998, I caused a copy of the foregoing to be sent to the below listed individual by overnight mail:

Scott Wilensky
Assistant Attorney General
1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

A handwritten signature in black ink, appearing to read "Antony Petrilla", written over a horizontal line.

Antony Richard Petrilla